

## REMARKS

Claims 2-20 and 22-42 are currently pending in the present application. Reconsideration of the claims is respectfully requested in light of the arguments as set forth herein.

### REJECTIONS UNDER 35 U.S.C. §102:

Claims 2-9, 11-14, 32 and 36 were rejected under 35 U.S.C. §102(b) as being anticipated by VanDenberg, U.S. Patent No. 5,718,445. Independent claim 2 defines a vehicle suspension assembly that comprises, among other things, a first control arm adapted to be pivotally coupled to a first frame member and an axle, a second control arm adapted to be pivotally coupled to a second frame member and an axle, and a rigid first torsional member coupled to the first control arm along a length of the first control arm rearward of the first bushing and forward of an axle, and coupled to the second control arm along a length of the control arm rearward of the second bushing and forward of an axle, and wherein the first torsional member is fixedly coupled to the first control arm proximate the first end of the control arm, and wherein the torsional member is fixedly coupled to the second control arm proximate the first end of the second control arm. VanDenberg does not disclose the torsional member being coupled to associated control arms proximate an end thereof. Specifically, VanDenberg discloses a stabilizer bar affixed to associated control arms at nearly a midpoint of the control arms. While “proximate” is a relative term, it must be afforded the plain meaning within the context of the claim. As set forth in MPEP 2111.01, the words of a claim must be given their “plain meaning unless they are defined in the specification.” Specifically, “ordinary, simple English words whose meaning is clear and unquestionable, absent any indication that their use in a particular context changes their meaning, are construed to mean exactly what they say.” *Leibel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 906, 69 U.S.P.Q.2d 1801, 1807 (Fed. Cir. 2004). *Merriam-Webster*, copyright 2007, defines “proximate” as “very near.” As VanDenberg ‘445 fails to disclose a control arm that is “proximate” ends of associated control arms, it cannot anticipate that which is defined in newly independent claim 2.

Claim 8 defines the bushings of the first and second ends of the first and second control arms as each including an aperture extending therethrough, wherein the aperture is elongated, and is therefore also allowable over VanDenberg for this additional reason.

CLAIM REJECTIONS UNDER 35 U.S.C. §103:

Claim 10 was rejected under 35 U.S.C. §103(a) as being unpatentable over VanDenberg in view of Mair, U.S. Patent No. 6,409,280. Applicants believe this rejection to be moot in view of the amendments as noted above. However, Applicants further note that the Mair patent is directed to, defines and discloses a truck and trailer hub and is non-analogous art. Specifically, claim 10 defines a the coupling of a torsional member between control arms in the associated vehicle suspension assembly, while Mair discloses a truck and trailer axle hub. It is well known that the scope of pertinent prior art has been defined as that reasonably pertinent to a particular problem with which the inventor was involved. *Lindemann Maschine Fabrik GmbH. v. American Hoist and Derrick Co.*, 730 F.2d 1452, 1460, 221 U.S.P.Q. 481, 487 (Fed. Cir. 1984) quoting *Stratoflex, Inc. v. Aeroquip Corp.* 713 F.2d 1530, 1535, 218 U.S.P.Q. 871, 876 (Fed. Cir. 1983). Moreover, the standard for finding obviousness is based on “ordinary skill in the art,” which in the present application are those associated with heavy duty vehicle suspension systems, not “anyone of sufficient skill in the art of attaching a metal tubular member to another member,” as is argued in the Office Action. Further Applicants contend that the arguments that “Mair teaches using connections such as that described by Applicant to attach a tubular member of a vehicle to another member of said vehicle,” and “[b]ecause Mair involves the under-workings of a vehicle and teaches a method of connection in said area it is considered to be analogous,” [see Office Action of December 10, 2008, pg. 8, lns. 6-10], is based on gross generalizations and ignores the core technology to which Mair is related, namely, the construction of a truck and trailer hub, and not the attachment of torsional members to a trailing arm such as that defined in claim 10. Applicant notes that the flange as disclosed by Mair is adapted for securing the associate hub to a wheel and brake drum assembly. Therefore, Applicants submit that it is improper to combine that which is taught in the respective references as they are non-analogous art.

Claims 15 and 16 were rejected under 35 U.S.C. §103(a) as being unpatentable over VanDenberg in view of Bell, U.S. Patent No. 1,984,565. The rejection is based on an argument that Bell teaches a vehicle wheel suspension assembly with an L-shaped control arm on which a bar is connected to an elbow, and that it would have been obvious to one of ordinary skill in the art at the time of the invention to applied the teaching of Bell of an L-shaped control arm to the

vehicle suspension assembly of Pierce [sic.] and have coupled the torsion bar to the elbows of the first and second arms to allow for the torsion member to be coupled to the control arm in a spot other than the connecting point between the control arm and the vehicle frame member while still being connected to the end of the control arm. However, none of the support for this combination, and specifically for the arrangement as argued, is taught, motivated or suggested in the art, nor would it have been obvious to one of ordinary skill in the art. Specifically, the arguments are based on an assumption that it would have been obvious to attach a torsional member into a point that, within Bell, is currently occupied by a pivot bushing, that it would have been obvious to replace this pivot bushing with a fixed connection between the control arm and the pivot member (as taught by Bell) and that it would have further been obvious to replace the pivot member extending between the pivot point located along the length of the control arm and the chassis, with a torsional member extending between a pair of control arms. The Examiner's argument of "L-shaped control arms are common in the art" does not appear to address the Examiner's arguments other than by a simple conclusory statement.

Claim 17 was rejected under 35 U.S.C. §103(a) as being unpatentable over VanDenberg in view of Goby, U.S. Patent No. 2,823,927. Specifically, it is argued that Goby teaches a vehicle suspension system that comprises at least one control arm, the end of which is fork-shaped and attached to an associated vehicle's axle, and that it would have been obvious to one of ordinary skill in the art at the time of the invention to apply the teaches of Goby's fork-shaped control arm to the vehicle suspension assembly of VanDenberg et al. to reduce friction between the axle and the control arm. However, Applicants are unsure as to how one would incorporate the forked-end of Goby with the bushings of VanDenberg, and contend that such a significant reconfiguration of that which is actually taught by Goby would not have been obvious.

Claims 18-20 and 29-35 were rejected under 35 U.S.C. §103 as being unpatentable over VanDenberg in view of Conover, U.S. Patent No. 6,832,772. Specifically, it is argued that Conover teaches a torsion bar that is configured to be pivotably attached to a pair of control arms. However, Applicants note that it is impossible to pivot the tube (5) with respect to the lever arms (1, 2) subsequent to full assembly with the bolt, nut and washer assembly (6). Applicants contend that a prima facie case of obviousness has not been met, and that Conover simply does not disclose that which is being argued in the Office Action. Conover does not disclose the

necessary pivoting motion unless Conover is modified from what it teaches. Therefore, claims 18-20 and 29-35 would not be obvious in view of the cited combination.

Claims 2, 18-20 and 22-42 were rejected under 35 U.S.C. §103(a) as being unpatentable over Buhl, U.S. Pat. No. 5,711,544, in view of VanDenberg, U.S. Pat. No. 5,882,031. Applicant contend that neither Buhl nor VanDenberg '031 teach, motivate or suggest that which is defined in claim 2, either singularly or held in combination.

As noted above with respect to the §102 rejection of claim 2 based on VanDenberg '445, claim 2 defines a vehicle suspension assembly that comprises, among other things, a first control arm adapted to be pivotally coupled to a first frame member and an axle, a second control arm adapted to be pivotally coupled to a second frame member and an axle, and a rigid first torsional member coupled to the first control arm along a length of the first control arm rearward of the first bushing and forward to an axle, and coupled to the second control arm along a length of the control arm rearward of the second bushing and forward of an axle, and wherein the first torsional member is fixedly coupled to the first control arm proximate the first end of the control arm, and wherein the torsional member is fixedly coupled to the second control arm proximate the first end of the second control arm. Neither Buhl nor VanDenberg '031 disclose a torsional member that is fixedly coupled to a control proximate the end of the control arm. As best illustrated in Fig. 10 of Buhl, the stabilizer bar thereof is connected to associated control arms at two points 7, 8, which are located halfway between a center point of the control arm and the ends thereof. Applicants contend that the location of the points 7, 8 are not proximate an end of the control arms, in accordance with the plain meaning of the word "proximate." See, MPEP 2111.01, and *Leibel-Flarsheim Co. v Medrad, Inc.*

Applicants further contend that the rejection of claim 2 is based upon an improper picking-and-choosing of elements from the references as cited. It is well established that virtually all inventions are necessarily combinations of old elements, and that the notion, therefore, that combination claims can be declared invalid merely upon finding similar elements in separate prior patents would necessarily destroy virtually all patents and cannot be the law under the statute, §103. *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1575, 1 USPQ2d 1593, 1603 (Fed. Dir. 1987). Applicants note that the main crux of the invention as disclosed by Mair is pivotable connection between the control arms and stabilizer bar, namely:

“a stabilizer bar 6 is arranged between the longitudinal control arms 2 and 3, and it is connected with its ends to one of the two longitudinal control arms 2 and 3 to rotate in unison, but limitedly movably in the longitudinal direction of the vehicle. This is achieved in the arrangement according to the example shown in FIGS. 1 and 2 by connecting the end of the stabilizer bar to the longitudinal control arms at two points 7 and 8 located at spaced locations from one another, wherein this connection is cardanically movable in order to make possible compensating movements. Ball joints designed as radial joints are preferably used for the articulation.”

See, Buhl, col. 2, ln. 64 through col. 3, ln. 8. Applicants contend that to replace the ball joints as disclosed by Buhl with a fixed connection as disclosed by the VanDenBerg ‘031 would render the Buhl invention inoperable, and that one skilled in the art would not pick-and-choose precisely the features as defined in claim 2 for this reason.

According, claim 2 is in condition for allowance. Claims 2-17 are dependent from claim 2 which is condition for allowance as noted above, and are therefore also in condition for allowance.

Claim 18 defines a vehicle suspension assembly that comprises, among other things, a rigid first torsional member coupled to a first control arm along a length of the first control arm rearward of and proximate to the first bushing and forward of an axle, and coupled to a second control arm along a length of the second control arm rearward of and proximate to the second bushing and forward of an axle. As noted above with respect to the rejection of claim 2 based on a combination of Buhl and VanDenBerg ‘031, neither of these cited referenced teach, motivate or suggest coupling a torsional member to a control arm, proximate an end of the control arm, and in the case of claim 18, proximate to the bushing members as defined therein.

Accordingly, claim 18 is in condition for allowance. Claims 19 and 20 are dependent from claim 18, which is condition for allowance as noted above, and are therefore also in condition for allowance.

Claim 22 defines a vehicle suspension assembly that comprises, among other things, a rigid first torsional member fixedly coupled to a first control arm along a length of the first control arm, and fixedly coupled to a second control arm along a length of the second control

arm. Applicants again contend that it would not have been obvious to replace the ball joints of Buhl with a fixed couple for that same reason as stated above with respect to claim 2.

Accordingly, claim 22 is in condition for allowance. Claims 23-28 depend from claim 22 which is condition for allowance, and are therefore also in condition for allowance.

Claim 29 defines a vehicle suspension assembly that comprises, among other things, a rigid first torsional member coupled to a first control arm along a length of the first control arm proximate the first end of the first control arm, and coupled to the second control arm along a length of the second control arm proximate the first end of the second control arm. Applicants contend that claim 29 is allowable over the combination of Buhl and VanDenberg '031 for the same reason as stated above with respect to claim 22.

According, claim 29 is in condition for allowance. Claims 30 and 31 are dependent from claim 29 which is condition for allowance, and are therefore also in condition for allowance.

Claim 32 defines a vehicle suspension assembly that comprises, among other things, a first control arm having a first end that includes a first bushing adapted to pivotally couple the first control arm to a first frame member of a vehicle, and a second control arm having a first end that includes a second bushing adapted to pivotally couple the first end of the second control arm to a second frame member of a vehicle. The record sets forth that "Buhl fails to disclose the control arms of the suspension system being coupled to the frame via bushings at the first ends thereof." See, Office Action of December 10, 2008, pg. 7, lns. 4 and 5. The record then sets forth that VanDenberg teaches first and second control arms having first and second bushings adapted to pivotally couple the control arms to associated frame members, and that adding the bushed connections of VanDenberg to that which is disclosed by Buhl "would have been obvious to one of ordinary skill in the art at the time of the invention to modify the suspension assembly of Buhl with the teaching of VanDenberg's bushings...to decrease friction between the frame and the control arm and to decrease production costs and ensure easier manufacturing of the torsional and control members." See, Office Action, pg. 7, lns. 19-22. Applicants contend that a prima facie case for obviousness has not yet been met. "A statement that modifications to the prior art to meet the claimed invention would have been 'well within the ordinary skill of the art at the time the claimed inventions was made' because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a

prima facie case of obviousness without some objective reason to combine the teachings of the references.” MPEP 2143.02(IV), citing *Ex parte Levengood*, 28 USPZ2d 1300 (Bd. Pat. App. & Inter. 1993). In the instant case, Applicants contend that there is no reason to believe that adding the bushings from VanDenberg to the control arms of Buhl would “decrease friction between the frame and the control arm,” “decrease production costs,” and/or “ensure easier manufacturing of the torsional and control members.” In proceedings before the Patent and Trademark Office, the Examiner bears the burden of establishing a prima facie case of obviousness based upon the prior art. MPEP 2142; *In re Fritch*, 23 USPQ 2d 1780, 1783 (Fed. Cir. 1992). Applicants respectfully assert that the Examiner has not yet met his burden of establishing a prima facie case of obviousness with respect to the rejected claims.

Accordingly, claim 32 is in condition for allowance.

Claim 33 defines subject matter similar to that as discussed above with respect to claim 32, is therefore allowable over the cited art for similar reasons, and is in condition for allowance. Claims 34 and 35 are dependent from claim 33, and are therefore also in condition for allowance.

Claim 37 defines a vehicle suspension assembly that comprises, among other things, a rigid first torsional member coupled to a first control arm along a length of the first control arm rearward of a first bushing and forward of an axle, and coupled to a second control arm along a length of the second control arm rearward of a second bushing and forward of an axle, wherein the first torsional member is coupled to the first control arm at a location along a length of the first control member that is closer to the first end of the first control arm than to a mid-point of the first control arm, and wherein the torsional member is coupled to the second control arm at a location along a length of the second control arm that is close to the first end of the second control arm than to a mid-point of the second control arm. Neither Buhl nor VanDenberg disclose a torsional member coupled to a control arm at a point along the length of the control arm that is close to the first end (as it is defined in claim 37) than to a midpoint of the control arm. Therefore, neither Buhl nor VanDenberg teach, motivate or suggest that which is defined in claim 37 either singularly or held in combination.

Accordingly, claim 37 is in condition for allowance. Claim 38 is dependent from claim 37 which is in condition for allowance, and is therefore also in condition for allowance.

Claim 39 defines elements similar to those discussed above with respect to claim 37, and is therefore allowable over Buhl in view of VanDenberg for similar reasons. Claims 40-42 are dependent from claim 39 which is condition for allowance, and are therefore also in condition for allowance.

Accordingly, claims 2-20 and 22-42 are believed to be in condition for allowance and a Notice of Allowability is earnestly solicited.

Respectfully submitted,

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